



REPUBLIC OF KENYA



Ethics and Anti-Corruption Commission v Mukuria & 7 others (Anti-Corruption and Economic Crimes Civil Suit E001 of 2022) [2024] KEHC 16704 (KLR) (Anti-Corruption and Economic Crimes) (20 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16704 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E001 OF 2022
BM MUSYOKI, J
DECEMBER 20, 2024**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

PATRICK MUKURIA 1ST DEFENDANT

TOP IMAGE MEDIA CONSULTANTS LIMITED 2ND DEFENDANT

JANE WANJIRU MBUTHIA 3RD DEFENDANT

FRANCIS MWANGI WA IRIA AKA WA IRIA MWANGI 4TH DEFENDANT

VALUE VIEW LIMITED 5TH DEFENDANT

JANE WAIGWE KIMANI 6TH DEFENDANT

PETER KARANJA 7TH DEFENDANT

MLIMA KENYA HOLIDAY HOMES LIMITED 8TH DEFENDANT

RULING

1. The 4th defendant has brought an application by way of notice of motion dated 4th October 2024 in which he prays for the following orders;
 1. That this application be determined before the main cause is set down for hearing.
 2. That the court does grant leave to the 4th defendant to file defence out of time.



3. That the court does order that the 4th defendant is supplied with a sequentially numbered list and bundle of all the evidence and documents to be relied on by the plaintiff as set in volumes 1-3 of the plaintiff's list of documents dated 26th July 2023.
4. That the costs of this application be in the cause.
2. The 4th defendant's earlier filed defence was struck out pursuant an order of this court dated 8-11-2023. The reasons for the striking out of the defence was failure by the 4th defendant to comply with the court's directions dated 8-11-2023 which required him and others to pay court adjournment costs of Kshs 20,000.00 and the plaintiff's costs of Kshs 5,000.00. The Honourable Justice Professor (Dr) Sifuna had issued the orders following the 2nd, 3rd, 4th, 6th, 5th and 7th defendants' reluctance to progress the matter.
3. On 26-09-2024, I delivered a ruling in which I declined to review the aforesaid orders of the learned Judge following which the 4th defendant filed the instant application. I have noted that the 4th defendant has now paid the costs awarded to the plaintiff. I have also seen correspondence where in which the applicant has forwarded cheques in efforts to pay costs to the court and explaining difficulties he has faced in paying through the court's portal.
4. The 4th defendant avers that he became aware of earlier dismissal of his application dated 15th November 2023 on 26th September 2023 when this court delivered its ruling. He pleads that this court pardon his oversight and mistake and not to visit it upon him. When I delivered the said ruling, I observed that the parties seemed to have lost track of the progress and status of the suit. Even the plaintiff seemed not to be aware of the fate of the application.
5. The plaintiff has claimed that the issue of the 4th defendant's defence is res judicata and this court is functus officio and the only option available to the 4th defendant was review or appeal. I don't think the doctrine of res judicata is applicable to the issue at hand. The 4th defendant's defence was struck out for noncompliance and its merits has never been discussed or argued before the court.
6. The orders being sought are discretionary and this court should not fetter its discretion or impose conditions on itself while deciding whether or not to grant the application. This is a matter in which the 4th defendant's defence was struck out as a punitive measure for lack of compliance with the court order. The said court orders have now been complied with. I also note that the claim in the matter is substantial and the evidence to be presented appears to be heavy which calls for close scrutiny and participation of all the parties. The plaintiff has received the costs awarded to it without protestation. It would be wrong to expect the plaintiff to retain the costs awarded and paid to it and at the same time lock the 4th defendant from presenting his defence. That would amount to the defendant suffering double jeopardy.
7. In the circumstances discussed above, I find it proper to exercise my discretion in favour of the 4th defendant but with a caution that it shall comply with court orders going forward. Court orders are not made in vain and are supposed to be complied with irrespective of how parties find them punitive.
8. Prayer 2 of the application dated 4th October 2024 is allowed. What the 4th defendant is seeking in prayer 3 involves matters of pre-trial. The court will give appropriate orders on pre-trials separately once the defence is properly on record. I consequently allow the 4th defendant's application dated 4-10-2024 in the following terms;
 - a. The 4th defendant is allowed to file and serve his defence within the next 7 days from the date of delivery of this ruling.



- b. The plaintiff shall file any reply to the 4th defendant's defence within 7 days of service of the defence.
- c. 4th defendant and any other defendant who has not filed their trial bundles shall do so within 21 days of delivery of this ruling.
- d. I will mention this matter on a date to be fixed after delivery of this ruling to confirm compliance and take a date for hearing.
- e. Any document filed outside the timelines given above shall be deemed as improperly on record.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered online in presence of Mr. Kamau for the 4th defendant, Mr. Kagiri for the 8th defendant and Mr. Mbiyu for the 6th defendant and Mr. Lincoln Kamau holding brief for Mr. Nganga Ngige for the 1st defendant.

